

MAJOR DIFFERENCES BETWEEN U.S. GOVERNMENT
AND MPSC COMMONWEALTH AGREEMENT

PROCEDURAL:

1. Title: Agreement v. Covenant; self-governing in title; Mariana Islands District of TTPI v. Commonwealth.
2. Name of Political Entity: Commonwealth of Mariana Islands v. Northern Mariana Islands.
3. Integrated Whole: Covenant has Titles and Articles; Commonwealth Agreement does not; Covenant has signatures after Titles and before Articles; we don't know why; Commonwealth Agreement has signatures after whole Agreement.
4. Enactment into Law: Both sides apparently agree on enactment, but Commonwealth Agreement is in a form which obviates the need for subsequent legislation to implement its provisions, while the Covenant is sometimes in such a form (§602(b) re cover-over), sometimes not (§405 re courts), and sometimes unclear (§602(a) (1) re phase II funds; probably not sufficiently precise to be an appropriation, but not clear)

SUBSTANTIVE:

1. WHEREAS CLAUSES:
 - some differences in order and wording
 - CA first whereas recognizes source of present U.S. authority; none in Covenant; this is found in §101 of Covenant
 - CA eliminates "benefits inherent in political union with U.S." from Covenant 4th Whereas; CA adds idea of government by consent to Covenant 3rd Whereas (CA 6th)

--Major differences:

(a) Time mutually binding: CA is mutually binding (only insofar as portions subject to mutual consent, of course) after approval by both sides; Covenant is binding after termination (see §§101, 102).

(b) Time Commonwealth established and effectiveness generally: CA has Commonwealth come into being before termination, after approval of CA and Marianas Constitution, except for sovereignty and citizenship; Covenant has Commonwealth come into being at termination, though much becomes effective earlier (including phase II money and U.S. land use), and President can make even more effective before termination (§802(a)). [Note apparent mistake in §802(a)(1) which makes citizenship provisions effective upon approval.]

CA § 205(a): Commonwealth authority extends to matters of local concern instead of local application Covenant § 308 (could be settled at technical level)

CA § 207(a): U.S. legislative power limited unlike Covenant § 102.

CA § 207(b): CA has list of provisions subject to mutual consent; § 102 of covenant does not, though it provides space for one; §102 of Covenant has special definition of government of the northern Marianas, apparently in order to permit mutual consent before establishment of Commonwealth.

CA § 208(a): Applicability of U.S. Constitution; Covenant § 401 makes applicable other constitutional provisions for which explanation is needed.

CA § 208(b): CA contains exceptions for one-man, one-vote, which Covenant § 402 does not contain; re land alienation exception, Covenant § 402 states Commonwealth will regulate land alienation and will regulate the extent of individual land holdings.

CA § 209(a) and (c): No similar provisions in U.S. Covenant re Commonwealth not an agency or instrumentality of U.S. and re full faith and credit. (could be settled at technical level)

CA § 210: Justiciability; not in Covenant though in Joint Communique. (could be settled at technical level)

CA § 211: Similar to Covenant § 307, but eliminates requirement that executive branch of Commonwealth will be responsible for faithful execution of applicable U.S. Laws.

CA § 304(c): Special provision limiting naturalization in the Marianas; not found in U.S. Covenant.

CA § 401: Applicability under a general formula; similar to § 403 of Covenant with following major issues raised:

- new U.S. position on internal revenue laws is reflected in Covenant § 403(a)(3);
- CA § 401(a)(1) and (2) contain exceptions to general formula not found in Covenant (banking, financial assistance, minimum wage, certain aspects of social security, certain aspects of public health and agricultural laws);
- CA § 401(b) reserves space for lower local matching or use of funds from federal sources to match federal funds; not found in Covenant.

CA § 402: Like Covenant § 404, it provides for a Commission on laws, but under CA § 402(b), not found in Covenant, Commission's recommendations become law unless disapproved.

CA § 501-507: Like Covenant §§ 405, 406, provides for U.S. District Court; but Covenant provides for court like Guam's while CA provides for moving toward a U.S. Constitutional Court as in a State.

CA § 601-603,605: Implements Joint Communique re taxation; Covenant §§ 403(a)(3) and 601(b) reflects new U.S. position.

CA § 604: Social Security laws; this is not handled specifically in Covenant, which would make U.S. Social Security tax applicable in full; CA § 604(b) provides for gradual imposition of the tax and CA § 604(a) provides for transfer of TT Social Security --neither found in Covenant.

CA §§ 609-611: Various customs and excise provisions found in Joint Communique, but not in Covenant (could be handled at technical level).

Note on Taxation Section: CA omits § 503(b) of Covenant which places a limit on local debt.

CA § 701: Reserved for immigration; Covenant does not deal with this.

CA § 702: Maritime laws; new Commission position reflected; Covenant does not deal with this.

CA § 801: General principles of economic support; Covenant § 601 differs mainly in that it refers to goal of higher standard of living, while CA § 801 refers to goal of standard of living comparable to that within other parts of U.S.

CA §§ 802-803: Implements Phase II plans; comparable provisions in Covenant, § 602(a)(1), implements U.S. version.

Note on Financial Section: Covenant includes in financial Section all direct and indirect aid (cash grants, payment for military lands, federal programs, cover-over of U.S. taxes, phase I funds), while CA financial section deals only with cash grants.

CA §§902-903: Military land; unresolved issues are extent of land, method of acquisition, payment or mechanism for payment, time as of which U.S. gets use rights (approval of Agreement or establishment of Commonwealth or another time). In addition, § 902(b)(10) provides that upon an uncorrected breach of the Commonwealth Agreement, as determined by a court, the Marianas Government could cause the lease to be terminated.

5 CA § 904: Provides for termination of all U.S. rights in land in the Marianas other than as provided in the Agreement; Covenant § 702(b) provides for return of un-used military retention land to Marianas; may be settled at technical level.

CA § 905: Lease of land to U.S. does not cede political jurisdiction; no comparable provision in Covenant.

CA § 907: Eminent Domain; Covenant has very different provisions in §§ 703(a) and (b).

CA § 1001: Discussions between the parties on the political relationship; no similar provision in Covenant.

CA § 1002(b): U.S. to support Commonwealth membership in international organizations; this used to be in Title V of Covenant but latest Covenant draft omits it; CA § 1002(b) also permits Commonwealth to join international organizations if Sec. of State agrees; this is not in either draft of the Covenant.

CA §§ 1101-1102: Delegate and Resident Commissioner; Covenant is silent on this issue, despite Joint Communique.

Note on Transition Section: Three key differences from Covenant --effectiveness, mutually binding date, enactment into law by U.S. Congress --have already been discussed.

CA § 1202: Re approval of Constitution of Marianas; main difference is that Covenant § 303 provides for U.S. Congress approval while CA § 1202(c) provides for U.S. President approval.

CA § 1206(a): Requires U.S. to make good faith effort at early partial termination; no similar provision in Covenant.

CA § 1206(d): Permits U.S. President to call second plebiscite; no similar provision in Covenant.

CA § 1207: Specifically permits separate administration in manner requested by District Legislature, but no later than establishment of Commonwealth; Covenant § 802(a)(2) leaves it entirely to U.S. President.